

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5622 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SULEMAN @ MITHU SULTANALI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR. D.P. JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

The petitioner is detenu who came to be detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') by virtue of an order passed by the District Magistrate, Bhavnagar on 17.3.1999 in exercise of powers under Section 3(1) of the PASA Act.

2. In the grounds of detention, the detaining

authority took into consideration five offences registered against the petitioner with A and B Divisions Police Station of the Bhavnagar City.

3. The authority also took into consideration statements of anonymous witnesses recorded on 9.3.1999. The authority recorded subjective satisfaction for the need to exercise the power under Section 9(2) of the PASA Act and claimed privilege by not disclosing the identity of these witnesses.

4. After considering the possibility of resorting to less drastic remedy, the detaining authority came to the conclusion that as the petitioner is required to be immediately prevented from pursuing his illegal activities the only remedy that can be resorted to is under the provisions of the PASA Act.

5. The petitioner has challenged the order of detention mainly on the ground that there is non-application of mind by the detaining authority which has resulted into infringement of rights of the detenu of making an effective representation.

6. Ms. Kachchhawah, learned counsel for the petitioner, submitted that the statements of anonymous witnesses which were relied on by the detaining authority were recorded on 9.3.1999. The same were verified by the Deputy Superintendent of Police, Bhavnagar City on 11.3.1999. The statements were verified by the detaining authority by putting one word verification on 17.3.1999 and the order was passed on that very day. Ms. Kachchhawah submitted that the detaining authority has no time to strike a balance between public interest and the interest of the detenu while considering the facts of the case. Therefore, the petition deserves to be allowed on this ground alone.

7. Mr. D.P. Joshi, learned A.G.P. appearing for the respondents has opposed this petition.

8. Considering the rival side's contention raised before this court, the undisputed facts are that the statements of anonymous witnesses were recorded by the sponsoring authority on 10.3.1999. The same were verified by the Deputy Superintendent of Police, Bhavnagar on 11.3.1999 and by the detaining authority on 17.3.1999. On 17.3.1999 itself the order of detention was passed.

9. While exercising the powers under Section 9(2) of

the PASA Act, it is expected of the detaining authority to take into consideration the public interest on one hand and the interest/right of the detenu on the other and strike a balance between the two. This requires proper and considered opinion formation. In the instant case the entire exercise of verifying the statements and passing the order under PASA Act is undertaken on the same date. The detaining authority has not filed any reply. This court was at loss as to what material was considered by the detaining authority and how in a such a short spell the authority could pass the order taking into consideration all relevant aspects when the statements of three witnesses are verified and the order is passed on the same date. In order to satisfy the authority about the genuineness of the fear expressed by the witnesses and the correctness of the facts stated in the statements, the detaining authority must have some material before it which would call for consideration. This court is at loss as to whether there was any such material before the detaining authority as the detaining authority has not filed any affidavit in reply.

10. In this view of the matter and taking into consideration the decision of a Division Bench of this Court in the case of Kalidas C. Kahar Vs. State reported in 1993(2) GLR 1659 the petition deserves to be allowed.

11. There is no contemporaneous material to lend support to the statement of witnesses or to the satisfaction arrived at by the detaining authority for the need to exercise powers under Section 9(2) of the PASA Act. There is nothing to indicate as to what material and factors were available with detaining authority and were considered by it while recording such satisfaction. The order therefore cannot be upheld. (Chandrakant N. Patel Vs. State of Gujarat & Ors. 1994(1) GLR 761). The satisfaction arrived at by the detaining authority therefore cannot be said to be genuine. Non-disclosure of the identity of witness has resulted into infringement of the right of detenu of making effective representation. The detention therefore would stand vitiated.

The petition is therefore allowed. The order of detention dated 17.3.1999 passed by the District Magistrate, Bhavnagar District, Bhavnagar is quashed and set aside. The detenu be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

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